

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 8709 of 2007(J)

PETITIONER:

**ASSOCIATED CEMENT COMPANY (ACC LTD),
BUILDING NO.TM 13/650C, THIRUVANGAD,
THALASSERY, REPRESENTED BY ITS DEPUTY MANAGER-
ACCOUNTS G.VENKOB RAO,**

BY ADV. SRI.R.RAMADAS

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, KOZHIKODE.**
- 3. THE ASSISTANT COMMISSIONER (AUDIT
ASSESSMENT), DEPARTMENT OF COMMERCIAL TAXES,
KANNUR.**

BY GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 8709/2007 J

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ASSESSMENT ORDER DT. 30/09/06 BY R3 FOR THE PERIOD 2005-06.

EXT.P2. COPY OF THE NOTICE OF DEMAND IN FROM NO.12 DT. 4/10/2006 TO THE PETITIONER BY R3.

EXT.P3. COPY OF THE APPEAL DT. OCT, 2006.

EXT.P4. COPY OF THE PETITION TO ADVANCE THE HEARING DT. OCT, 2006.

EXT.P5. COPY OF THE PETITION TO STAY THE COLLECTION OF TAX DT. OCT, 2006.

EXT.P6. COPY OF THE ORDER DT. 1/3/2007 BY R2.

True copy

tga

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.8709 of 2007-J

Dated this the 15th day of March, 2007

JUDGMENT

The petitioner attacks Ext.P6 interim order on the ground that it has been passed mechanically and without application of mind. The taxable turnover returned by the petitioner for the year 2005-2006 is 243,63,42,248/-. The petitioner has given discount to its dealers by issuing credit notes. The total amount of discount will come to Rs.3,51,33,852/-. The petitioner asserts it did not claim any deduction for the said amount. The said amount was also shown as total turnover. But, the assessing authority added the said amount also along with the sales turnover returned by the petitioner. The same is unwarranted and if the same is deleted, there will be no liability to pay tax except the admitted tax paid by it.

2. I heard the learned Government Pleader for the respondents on this point. I think it was a crucial point which should have been considered by the appellate authority while disposing its stay application. The said point is not seen considered. Though it is seen specifically raised by the representative of the petitioner, the said contention has been dealt with in the usual general manner. So, the impugned order is vitiated for not taking the relevant factor.

Accordingly, Ext.P6 is quashed. The stay petition is remitted to the appellate authority for fresh disposal, in accordance with law, within two weeks from the date of production of a copy of this judgment. If the contention of the petitioner that it has not deducted the discount subsequently given to its dealers by credit notes it is entitled to get relief. So, the appellate authority shall verify the said claim of the petitioner and pass appropriate orders on the said application within two weeks from the date of production of a copy of this judgment. Recovery pursuant to Ext.P2 will be kept in abeyance for one month from today.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

MS